THE HON'BLE SRI JUSTICE V.ESWARAIAH

CIVIL REVISION PETITION Nos.3741 of 2005 and 4430 OF 2006

DT.10.6.2011

CRP 3741 OF 2005
Between:
Smt S Padma

… Petitioner

And
B Bullamma and another

… Respondent

Counsel for the Petitioner: Sri C Ramachandra Raju

Counsel for respondents: Sri Burujuppa Reddy
The Court made the following ORDER:

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ORDER:

The parties and the suit arising out of which the present two revisions are filed is one and the same. The revision petitioner is plaintiff in O S No. 3087 of 2001 on the file of the II Additional Junior Civil Judge, Visakapatnam. The first defendant is represented by her General Power of Attorney viz.,
Mr S.N.A. Satyanarayana Raju. In the suit, an application in I.A.No.118 of 2005 was filed under Rule 32 of CPC to permit the General Power of Attorney holder to adduce his evidence on behalf of the first defendant who is staying in USA and another application in I.A.No. 264 of 2006 was filed under Order 18 Rule 3 (a) of CPC to permit the General Power of Attorney holder to appear and examine as a witness as his own witness to prove the case. The said applications were allowed by orders dated 29.3.2005 and 18.7.2006 respectively, against which the present revisions are filed.

In the instant case, two witnesses i.e., D.W.1 and D.W.2 were already examined and after examining them, the power of attorney holder/first defendant has filed his chief affidavit and intends to examine himself as D.W.3. The plaintiff/revision petitioner objected for the same on the ground that until permission is granted by the Court under Order 18 (3a) of Civil Procedure Code, the General Power of Attorney holder cannot be permitted to be examined as first defendant. The said objection was over-ruled by the Court below by order dated 2.9.2005, against which the plaintiff filed a

revision in C.R.P. No. 5257 of 2005 and the same was allowed by order dated 3.3.2006 by placing reliance on the judgments of this Court in **Aitipamula Shivalingam Vs.Aitipamula Chinna Narsamma**[1], **and Devarapalli Pattabhi Ramaiah Vs.Davuluri Lakshmi Prasanna**[2]. In **Aitipamula Shivalingam** case it was held that when a party wishes to examine himself/herself as a witness at a later stage after examining other witnesses on his/her behalf, requirement of seeking permission of the Court under Order XIII Rule 3-A CPC need not be at the threshold itself and the Court can permit the party to examine himself/herself as a witness at any stage if sufficient reasons are shown by recording reasons. Accordingly, this Court permitted the first defendant to file an appropriate application under Order XVIII Rule 3-A CPC and directed the Court below to consider the same and pass appropriate orders.

On a perusal of affidavit filed in support of I.A.No. 264 of 2006, it is quite clear that absolutely there are no reasons stated as to why the first defendant/General Power of Attorney holder is desirous to be examined after examining D.W.1 and D.W.2. The only reason stated is that the first defendant is a 'Non Resident Indian (NRI)' and residing abroad and cannot appear for all the adjournments, as such has given a power of attorney.

Order 18 Rule 3-A of CPC prescribes that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

Thus, it is clear that, if the parties to the suit are desirous to be examined at a later stage, they shall show sufficient reasons and unless the

Court permit them by recording reasons to give evidence at a later stage, the parties cannot be allowed to do so. In the instant case it is stated that the defendants without entering into the witness box, got examined D.W.1 and 2. Learned counsel for petitioner submits that leave alone the General Power of Attorney holder, even the first defendant cannot be permitted to be examined at a later stage as no reasons have been shown by the defendants for not entering into the witness box before examining D.W.1 and 2. When the first defendant herself cannot be examined at a later stage, the question of permitting the General Power of Attorney holder to be examined at a later stage, does not arise, as no reasons have been stated.

No doubt, the General Power of Attorney holder is entitled to enter into the witness box as a party and entitled to give evidence but in the present case, the General Power of Attorney holder has not chosen to enter into the witness box at the earliest stage and two witnesses were already examined and no cause has been shown as to why the General Power of Attorney holder is desirous to be examined after D.W.1 and D.W.2 are examined**.**

For the foregoing reasons, I am of the opinion that the Court below has committed an error in permitting the General Power of Attorney holder to be examined as D.W.3 on behalf of first defendant, inasmuch it is contrary to Order XVIII Rule (3a) of CPC and the revision petitions are therefore liable to be allowed.

Accordingly, the orders passed in I.A.No. 118 of 2005 dated 29.3.2005 and I.A. No. 264 of 2006 dated 18.7.2006 in O.S.No. 3087 of 2001 are hereby set aside and the revision petitions are allowed. No costs. However, it is open for the defendants to file appropriate application seeking permission to examine themselves as parties by showing reasonable cause.

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V.ESWARAIAH,J

DATE: 10.6.2011

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[1] 1998 (1) ALT 7 *DB)

[2] 1997 (6)ALT 475(DB)